IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.748 OF 2006

In

NOTICE OF MOTION NO.3018 OF 2006

In

SUIT NO.2555 OF 2006

Galaxy Realtors & Ors. : Appellants

(Orig.Defendant nos.42 to 44)

V/s.

Shalibhadra Griha Nirman Private Limited

& Ors. : Respondents

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Mr.D.V.Merchant, senior counsel, i/b. Mr.P.S.Shah for the appellants.

Mr.D.D.Madon, senior counsel, with Mr.C.S.Balsara and Mr.Cyrus Ardeshir i/b. Ms Vanita Kakkar for respondent no.1.

Mr.R.V.Govilkar with Mr.H.T.Pawar for respondent nos.2 to 4.

Mr.S.M.Kazi for respondent nos.5 to 42.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 17, 2006.

P.C.

1. We heard senior counsel for the appellants, senior counsel for the respondent no.1, the counsel for the respondent nos.2 to 4 and the counsel for respondent nos.5

to 42.

2. By our order dated 17.10.2006, we issued notice to the respondents to show cause why the appeal be not admitted and disposed of at the admission stage. All the respondents are served and, hence, we dispose of the appeal at this stage.

3. The appeal is against the ad-interim order of status quo and, therefore, we do not intend to deal with the facts at great length. Suffice it to say that the respondent nos.5 to 42 (hereinafter referred to as "Nalavades") entered into an Agreement of Sale dated 8.12.1985 in respect of the subject property with the respondent nos.2 to 4 (hereinafter referred to as "Vijaylaxmi"). Nalavades terminated their agreement with Vijaylaxmi which led to the filing of the suit by Vijaylaxmi against Nalavades before this Court, being Suit no.143 of 1995. It appears that temporary injunction was granted in the said suit restraining Nalavades from dealing with, disposing of, parting with possession or putting up any other party in possession of the suit property. An appeal was preferred against the said order, but the same came to be dismissed. However, the admitted fact is that thereafter the said suit had been withdrawn by Vijaylaxmi. Vijaylaxmi also entered into an agreement

with Shalibhadra Griha Nirman Private Limited (hereinafter referred to as "Shalibhadra") on 27.5.2001 in respect of the suit property. Nalavades appear to have entered into an agreement with the present appellants (hereinafter referred to as "Galaxy Realtors") on 8.7.2006 for sale of the subject property. Vijaylaxmi is the confirming party to the said agreement. Aggrieved by the Agreement for Sale dated 8.7.2006 between Nalavades and Galaxy Realtors wherein Vijaylaxmi is the confirming party, Shalibhadra filed the suit for specific performance of the contract dated 27.5.2001 impleading Nalavades, Vijaylaxmi and Galaxy Realtors as the party defendants. In that suit, Shalibhadra sought for interim relief by taking out Notice of Motion no.3018 of 2006. The learned Motion Judge has passed an order directing the parties to maintain status quo on 8.9.2006. Aggrieved thereby, Galaxy Realtors have come up in appeal.

4. Admittedly, Nalavades are owners of the suit property. It is also not in dispute that the agreement dated 8.12.1985 that Vijaylaxmi had with Nalavades had been terminated and that the suit filed by Vijaylaxmi seeking specific performance of the contract dated 8.12.1985 before this Court had been withdrawn. Vijaylaxmi, in the circumstances, prima facie, cannot be said to have any interest in the property whatsoever. As a necessary

sequitur, by the agreement dated 27.5.2001, Shalibhadra, by no stretch of imagination, can be said to have acquired any interest in the suit property.

5. Shalibhadra, having no prima facie case, was not entitled to an ad-interim order. Needless to say that the order of status quo is nothing but an order of injunction. Shalibhadra having failed miserably to show any semblance of interest in the property, the ad-interim order passed by the learned single Judge is totally unjustified.

6. The impugned order is, therefore, unsustainable and is set aside.

7. Appeal is, accordingly, allowed.

8. We request the learned Motion Judge to hear and decide the Notice of Motion expeditiously, if possible. Whatever has been stated by us in this order is only for the purpose of disposal of the present appeal and shall not influence the consideration of the Notice of Motion on its own merit.

9. Oral prayer for stay is rejected.

R.M. LODHA, J.

S.A. BOBDE, J.